

104TH CONGRESS  
2D SESSION

# H. R. 3436

To protect the health of mothers and newborns against the premature termination of inpatient care based on denial of health coverage.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 10, 1996

Mr. DINGELL introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To protect the health of mothers and newborns against the premature termination of inpatient care based on denial of health coverage.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Minimum Obstetrical  
5   Medical Security Act of 1996” or the “MOMS Act of  
6   1996”.

### 7   **SEC. 2. FINDINGS.**

8       Congress finds that—

1           (1) health care for mothers and newborn chil-  
2       dren, including the length of post-delivery inpatient  
3       care, should be based on the unique characteristics  
4       of each mother and her newborn child, taking into  
5       consideration the health of the mother, the health  
6       and stability of the newborn, the ability and con-  
7       fidence of the mother and father to care for the new-  
8       born, the adequacy of support systems at home, and  
9       the access of the mother and newborn to appropriate  
10      follow-up health care; and

11           (2) the timing of the discharge of a mother and  
12      her newborn child from the hospital should be made  
13      by the attending provider in consultation with the  
14      mother.

15 **SEC. 3. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**  
16 **STAY FOLLOWING BIRTH.**

17      (a) IN GENERAL.—Except as provided in subsection  
18 (b), a health plan or an employee health benefit plan that  
19 provides maternity benefits, including benefits for child-  
20 birth, shall ensure that coverage is provided with respect  
21 to a mother who is a participant, beneficiary, or policy-  
22 holder under such plan and her newborn child for a mini-  
23 mum of 48 hours of inpatient length of stay following a  
24 normal vaginal delivery, and a minimum of 96 hours of  
25 inpatient length of stay following a caesarean section,

1 without requiring the attending provider to obtain author-  
 2 ization from the health plan or employee health benefit  
 3 plan.

4 (b) EXCEPTION.—Notwithstanding subsection (a), a  
 5 health plan or an employee health benefit plan shall not  
 6 be required to provide coverage for post-delivery inpatient  
 7 length of stay for a mother who is a participant, bene-  
 8 ficiary, or policyholder under such plan and her newborn  
 9 child for the period referred to in subsection (a) if—

10 (1) a decision to discharge the mother and her  
 11 newborn child prior to the expiration of such period  
 12 is made by the attending provider in consultation  
 13 with the mother; and

14 (2) the health plan or employee health benefit  
 15 plan provides coverage for post-delivery follow-up  
 16 care as described in section 4.

17 **SEC. 4. POST-DELIVERY FOLLOW-UP CARE.**

18 (a) IN GENERAL.—In the case of a decision to dis-  
 19 charge a mother and her newborn child from the inpatient  
 20 setting prior to the expiration of 48 hours following a nor-  
 21 mal vaginal delivery or 96 hours following a caesarean sec-  
 22 tion, the health plan or employee health benefit plan shall  
 23 provide coverage for timely post-delivery care. Such health  
 24 care shall be provided to a mother and her newborn child  
 25 by a registered nurse, physician, osteopathic physician,

1 nurse practitioner, nurse midwife, or physician assistant  
2 experienced in maternal and child health in—

3 (1) the home, a provider’s office, a hospital, a  
4 birthing center, an intermediate care facility, a fed-  
5 erally qualified health center, a federally qualified  
6 rural health clinic, or a State health department ma-  
7 ternity clinic; or

8 (2) another setting determined appropriate by  
9 the attending provider and the mother;

10 except that such coverage shall ensure that the mother has  
11 the option to be provided with such care in the home.

12 (b) **TIMELY CARE.**—As used in subsection (a), the  
13 term “timely post-delivery care” means health care that  
14 is provided—

15 (1) within the 72-hour period immediately fol-  
16 lowing the discharge of a mother and her newborn  
17 child from the inpatient setting; and

18 (2) in a manner that meets the health care  
19 needs of the mother and her newborn child and that  
20 provides for the appropriate monitoring of the condi-  
21 tions of the mother and child.

22 **SEC. 5. PROHIBITIONS.**

23 In implementing the requirements of this Act, a  
24 health plan or an employee health benefit plan may not—

1           (1) deny enrollment, renewal, or continued cov-  
2           erage to a mother and her newborn child who are  
3           participants, beneficiaries, or policyholders based on  
4           compliance with this Act;

5           (2) provide monetary payments or rebates to  
6           mothers to encourage such mothers to request less  
7           than the minimum coverage required under this Act;

8           (3) penalize or otherwise reduce or limit the re-  
9           imbursement of an attending provider because such  
10          provider provided treatment in accordance with this  
11          Act; or

12          (4) provide incentives (monetary or otherwise)  
13          to an attending provider to induce such provider to  
14          provide treatment to an individual policyholder, par-  
15          ticipant, or beneficiary in a manner inconsistent with  
16          this Act.

17 **SEC. 6. NOTICE.**

18          (a) **EMPLOYEE HEALTH BENEFIT PLAN.**—An em-  
19          ployee health benefit plan shall provide conspicuous notice  
20          to each participant regarding coverage required under this  
21          Act not later than 120 days after the date of enactment  
22          of this Act, and as part of its summary plan description.

23          (b) **HEALTH PLAN.**—A health plan shall provide no-  
24          tice to each policyholder regarding coverage required

1 under this Act. Such notice shall be in writing, promi-  
2 nently positioned, and be transmitted—

3 (1) in a mailing made within 120 days of the  
4 date of enactment of this Act by such plan to the  
5 policyholder; and

6 (2) as part of any annual enrollment packet or  
7 brochure sent to the policyholder.

8 **SEC. 7. APPLICABILITY.**

9 (a) CONSTRUCTION.—

10 (1) IN GENERAL.—A requirement or standard  
11 imposed under this Act on a health plan shall be  
12 deemed to be a requirement or standard imposed on  
13 the health plan issuer. Such requirements or stand-  
14 ards shall be enforced by the State insurance com-  
15 missioner for the State involved or the official or of-  
16 ficials designated by the State to enforce the re-  
17 quirements of this Act. In the case of a health plan  
18 offered by a health plan issuer in connection with an  
19 employee health benefit plan, the requirements or  
20 standards imposed under this Act shall be enforced  
21 with respect to the health plan issuer by the State  
22 insurance commissioner for the State involved or the  
23 official or officials designated by the State to enforce  
24 the requirements of this Act.

1           (2) LIMITATION.—Except as provided in section  
 2           8(a)(2), the Secretary of Health and Human Serv-  
 3           ices shall not enforce the requirements or standards  
 4           of this Act as they relate to health plan issuers or  
 5           health plans. In no case shall a State of the Sec-  
 6           retary of Health and Human Services enforce the re-  
 7           quirements or standards of this Act as they relate  
 8           to employee health benefit plans.

9           (b) RULE OF CONSTRUCTION.—Nothing in this Act  
 10          shall be construed to affect or modify the provisions of  
 11          section 514 of the Employee Retirement Income Security  
 12          Act of 1974 (29 U.S.C. 1144).

13          (c) RULE OF CONSTRUCTION.—Nothing in this Act  
 14          shall be construed to require that a mother who is a par-  
 15          ticipant, beneficiary, or policyholder covered under this  
 16          Act—

17                 (1) give birth in a hospital; or

18                 (2) stay in the hospital for a fixed period of  
 19          time following the birth of her child.

## 20   **SEC. 8. ENFORCEMENT.**

21          (a) HEALTH PLAN ISSUERS.—

22                 (1) STATE ENFORCEMENT.—Each State shall  
 23          require that each health plan issued, sold, renewed,  
 24          offered for sale, or operated in such State by a  
 25          health plan issuer meet the standards established

1       under this Act. A State shall submit such informa-  
2       tion as required by the Secretary of Health and  
3       Human Services demonstrating effective implemen-  
4       tation of the requirements of this Act.

5               (2) FALLBACK FEDERAL ENFORCEMENT.—In  
6       the case of the failure of a State to substantially en-  
7       force the standards and requirements set forth in  
8       this Act with respect to health plans, the Secretary  
9       of Health and Human Services shall enforce the  
10      standards of this Act in such State. In enforcing  
11      such standards, the Secretary may apply against a  
12      health plan issuer the sanctions similar to the sanc-  
13      tions described in sections 502, 504, 506, and 510  
14      of the Employee Retirement Income Security Act of  
15      1974 (29 U.S.C. 1132, 1134, 1136, and 1140).

16      (b) EMPLOYEE HEALTH BENEFIT PLANS.—With re-  
17      spect to employee health benefit plans, the standards es-  
18      tablished under this Act shall be enforced in the same  
19      manner as provided for under sections 502, 504, 506, and  
20      510 of the Employee Retirement Income Security Act of  
21      1974 (29 U.S.C. 1132, 1134, 1136, and 1140). The civil  
22      penalties contained in paragraphs (1) and (2) of section  
23      502(c) of such Act (29 U.S.C. 1132(c)) shall apply to any  
24      information required by the Secretary of Labor to be dis-  
25      closed and reported under this section.



1       (c) REGULATIONS.—The Secretaries of Health and  
2 Human Services and Labor (as the case may be) may pro-  
3 mulgate such regulations as may be necessary or appro-  
4 priate to carry out this Act.

5 **SEC. 9. DEFINITIONS.**

6       As used in this Act:

7           (1) ATTENDING PROVIDER.—The term “attend-  
8 ing provider” means an obstetrician-gynecologist, pe-  
9 diatrician, family physician, osteopathic physician, or  
10 other physician or a nurse practitioner, nurse mid-  
11 wife, or other health care provider primarily respon-  
12 sible for the care of a mother and her newborn child,  
13 and includes a group including such a provider.

14          (2) BENEFICIARY.—The term “beneficiary” has  
15 the meaning given such term under section 3(8) of  
16 the Employee Retirement Income Security Act of  
17 1974 (29 U.S.C. 1002(8)).

18          (3) EMPLOYEE HEALTH BENEFIT PLAN.—

19           (A) IN GENERAL.—The term “employee  
20 health benefit plan” means any employee wel-  
21 fare benefit plan, governmental plan, or church  
22 plan (as defined under paragraphs (1), (32),  
23 and (33) of section 3 of the Employee Retirement  
24 Income Security Act of 1974 (29 U.S.C.  
25 1002 (1), (32), and (33))) that provides or pays

1 for health benefits (such as provider and hos-  
2 pital benefits) for participants and beneficiaries  
3 whether—

4 (i) directly;

5 (ii) through a health plan offered by  
6 a health plan issuer as defined in para-  
7 graph (4); or

8 (iii) otherwise.

9 (B) RULE OF CONSTRUCTION.—An em-  
10 ployee health benefit plan shall not be con-  
11 strued to be a health plan or a health plan is-  
12 suer.

13 (C) ARRANGEMENTS NOT INCLUDED.—  
14 Such term does not include the following, or  
15 any combination thereof:

16 (i) Coverage only for accident, or dis-  
17 ability income insurance, or any combina-  
18 tion thereof.

19 (ii) Medicare supplemental health in-  
20 surance (as defined under section  
21 1882(g)(1) of the Social Security Act).

22 (iii) Coverage issued as a supplement  
23 to liability insurance.

1 (iv) Liability insurance, including gen-  
2 eral liability insurance and automobile li-  
3 ability insurance.

4 (v) Workers compensation or similar  
5 insurance.

6 (vi) Automobile medical payment in-  
7 surance.

8 (vii) Coverage for a specified disease  
9 or illness.

10 (viii) Hospital or fixed indemnity in-  
11 surance.

12 (ix) Short-term limited duration in-  
13 surance.

14 (x) Credit-only, dental-only, or vision-  
15 only insurance.

16 (xi) A health insurance policy provid-  
17 ing benefits only for long-term care, nurs-  
18 ing home care, home health care, commu-  
19 nity-based care, or any combination there-  
20 of.

21 (4) GROUP PURCHASER.—The term “group  
22 purchaser” means any person (as defined under  
23 paragraph (9) of section 3 of the Employee Retirement  
24 Income Security Act of 1974 (29 U.S.C.  
25 1002(9))) or entity that purchases or pays for health

1 benefits (such as provider or hospital benefits) on  
2 behalf of participants or beneficiaries in connection  
3 with an employee health benefit plan.

4 (5) HEALTH PLAN.—

5 (A) IN GENERAL.—The term “health plan”  
6 means any group health plan or individual  
7 health plan.

8 (B) GROUP HEALTH PLAN.—The term  
9 “group health plan” means any contract, policy,  
10 certificate, or other arrangement offered by a  
11 health plan issuer to a group purchaser that  
12 provides or pays for health benefits (such as  
13 provider and hospital benefits) in connection  
14 with an employee health benefit plan.

15 (C) INDIVIDUAL HEALTH PLAN.—The term  
16 “individual health plan” means any contract,  
17 policy, certificate, or other arrangement offered  
18 to individuals by a health plan issuer that pro-  
19 vides or pays for health benefits (such as pro-  
20 vider and hospital benefits) and that is not a  
21 group health plan.

22 (D) ARRANGEMENTS NOT INCLUDED.—

23 Such term does not include the following, or  
24 any combination thereof:

1 (i) Coverage only for accident, or dis-  
2 ability income insurance, or any combina-  
3 tion thereof.

4 (ii) Medicare supplemental health in-  
5 surance (as defined under section  
6 1882(g)(1) of the Social Security Act).

7 (iii) Coverage issued as a supplement  
8 to liability insurance.

9 (iv) Liability insurance, including gen-  
10 eral liability insurance and automobile li-  
11 ability insurance.

12 (v) Workers compensation or similar  
13 insurance.

14 (vi) Automobile medical payment in-  
15 surance.

16 (vii) Coverage for a specified disease  
17 or illness.

18 (viii) Hospital or fixed indemnity in-  
19 surance.

20 (ix) Short-term limited duration in-  
21 surance.

22 (x) Credit-only, dental-only, or vision-  
23 only insurance.

24 (xi) A health insurance policy provid-  
25 ing benefits only for long-term care, nurs-

1 ing home care, home health care, commu-  
2 nity-based care, or any combination there-  
3 of.

4 (E) CERTAIN PLANS INCLUDED.—Such  
5 term includes any plan or arrangement not de-  
6 scribed in any clause of subparagraph (D)  
7 which provides for benefit payments, on a peri-  
8 odic basis, for a period of hospitalization, with-  
9 out regard to the costs incurred or services ren-  
10 dered during the period to which the payments  
11 relate.

12 (6) HEALTH PLAN ISSUER.—The term “health  
13 plan issuer” means any entity that is licensed (prior  
14 to or after the date of enactment of this Act) by a  
15 State to offer a health plan.

16 (7) PARTICIPANT.—The term “participant” has  
17 the meaning given such term under section 3(7) of  
18 the Employee Retirement Income Security Act of  
19 1974 (29 U.S.C. 1002(7)).

20 **SEC. 10. PREEMPTION.**

21 (a) IN GENERAL.—The provisions of this Act shall  
22 not preempt those provisions of State law—

23 (1) that provide greater protections to patients  
24 or policyholders than those required in this Act;

1           (2) that require health plans to provide cov-  
2           erage for at least 48 hours of inpatient length of  
3           stay following a normal vaginal delivery, and at least  
4           96 hours of inpatient length of stay following a cae-  
5           sarean section;

6           (3) that require health plans to provide cov-  
7           erage for maternity and pediatric care in accordance  
8           with guidelines established by the American College  
9           of Obstetricians and Gynecologists, the American  
10          Academy of Pediatrics, or other established profes-  
11          sional associations of licensed health care providers  
12          specializing in obstetrical, gynecological, or pediatric  
13          care; or

14          (4) that leave decisions regarding appropriate  
15          length of stay entirely to the attending provider in  
16          consultation with the mother.

17          (b) FOLLOW-UP CARE.—The provisions of this Act  
18          with respect to follow-up care as described in section 4  
19          shall not preempt those provisions of State law that pro-  
20          vide greater protections to patients or policyholders than  
21          those required under this Act or that provide mothers and  
22          newborns with an option of timely post-discharge follow-  
23          up care in the home.

1 **SEC. 11. EFFECTIVE DATE.**

2 Except as otherwise provided for in this Act, the pro-  
3 visions of this Act shall apply as follows:

4 (1) With respect to health plans, such provi-  
5 sions shall apply to such plans on the first day of  
6 the contract year beginning on or after January 1,  
7 1997.

8 (2) With respect to employee health benefit  
9 plans, such provisions shall apply to such plans on  
10 the first day of the first plan year beginning on or  
11 after January 1, 1997.

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